IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1084 OF 2004

K.Madhavan Pillai ...Appellant

Vs.

Smt.Fellis J. Pereira & Ors. ...Respondent

CORAM: A.S.OKA, J.

DATED: JANUARY 18, 2005.

P.C.:

1. Heard Counsel appearing for the parties. Shri Anil Singh, learned Counsel for the Appellant states that as the Decree passed by the Trial Court was under Order VIII Rule 5 of Code of Civil Procedure, 1908, the Notice of Motion taken out under Order IX Rule 13 was not maintainable. He, therefore, seeks permission to withdraw this Appeal with liberty to challenge the Decree by filing appropriate proceedings.

2. Shri Holmagi, learned Counsel for Respondent No.1 submitted that the Appellant is not a party to the original suit and hence this Appeal is not maintainable. As Appeal is being withdrawn, I am not considering the said objection. The Respondent No.1 is free to raise the said objection when appropriate proceedings are filed by the Appellant for challenging the Decree.

3. Appeal is dismissed as withdrawn. The dismissal of the Appeal will not preclude the Appellant from challenging the impugned Judgment and Decree passed by the City Civil Court by filing appropriate proceedings.

4. There will be no order as to costs.

5. Parties to act upon an authenticated copy of this order.

Judge.